

**2004-05 ANNUAL FUNDING AGREEMENT
BETWEEN THE
UNITED STATES FISH AND WILDLIFE SERVICE
AND
THE COUNCIL OF ATHABASCAN TRIBAL GOVERNMENTS**

Section 1. Nature of Document, Parties

This annual funding agreement (hereinafter referred to as “AFA” or “this Agreement”) between the United States Fish and Wildlife Service (hereinafter referred to as “FWS”), an agency of the United States Department of the Interior, acting under delegation from the Secretary of the Interior (“Secretary”) and by the Council of Athabascan Tribal Governments (hereinafter referred to as “CATG”), a consortium of federally recognized Indian Tribes, is entered into pursuant to section 403(c) of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended by the Tribal Self-Governance Act of 1994, Pub. L. 103-413, and in accordance with the Compact of Self-Governance negotiated and agreed to by CATG and the Secretary under Title IV of Pub. L. 93-638, as amended (hereinafter referred to as “Compact”) dated October 1, 1999. The Compact is incorporated herein by reference in its entirety, and unless specifically provided for in this Agreement, or in any of the Project Work Descriptions attached to the Agreement, shall be binding on the parties.

Section 2. Purpose

A. *Fund and Perform Activities.* The purpose of this AFA is to establish the terms and conditions under which CATG will perform and the FWS will fund Activities for the Yukon Flats National Wildlife Refuge in Alaska during the term of the AFA.

B. *Recognize and Further Relationship and Significance.* This AFA recognizes and furthers:

(1) *Government-to-Government Relationship.* The government-to-government relationship that exists between the United States and federally recognized Indian Tribes of the United States generally, and the member Tribes of CATG, specifically.

(2) *Special Significance.* The special geographic, historical, and cultural significance to the Tribes which comprise CATG to the Activities under this Agreement within the boundaries of the Yukon Flats National Wildlife Refuge.

Section 3. Authority

This AFA is authorized by and is to be interpreted in a manner consistent with Title IV of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as added by section 204 of the Tribal Self-Governance Act of 1994, Pub. L. 103-413, and particularly section

403(c) of the Act (25 U.S.C. § 458cc(c)), which concerns additional activities administered by the Secretary and with the Compact, subject to the qualification that the terms of this Agreement supercede the terms of the Compact to the extent they are inconsistent.

Section 4. Definitions

In this annual funding agreement, the following terms and their derivatives have the specified meanings. As appropriate to the context in this AFA, the use of any defined or undefined term in the singular includes the plural, and vice versa.

Act, when capitalized, means the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended by the Tribal Self-Governance Act of 1994, Pub. L. 103-413.

Activity or Activities, when capitalized, means a program, service, function, or activity, or portion thereof, covered by this AFA.

Activity Record means an accurate, written record of an Activity performed by CATG under this AFA.

AFA means this annual funding agreement, including all recited attachments.

Available Property means any tool, equipment, material, or supply the FWS makes available for use by CATG in performing an Activity covered by this AFA. Available Property shall be specifically identified in the Attached Project Work Descriptions.

Board means the Board of the Council of Athabascan Tribal Governments.

Chairman means the Chairman of the Council of Athabascan Tribal Governments.

CATG means the Council of Athabascan Tribal Governments.

CATG Employee means a person employed by CATG directly.

Compact means the Compact negotiated and signed between the Council of Athabascan Tribal Governments and the Secretary dated October 1, 1999.

Department means the United States Department of the Interior.

Designated Official means the person designated by both parties in section 20 of this AFA.

FWS means the United States Fish and Wildlife Service in the United States Department of the Interior.

ISDEAA means the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended by the Tribal Self-Governance Act of 1994, Pub. L. 103-413.

Must, shall, and will have the same meaning, indicating a requirement to perform as specified.

NWR means National Wildlife Refuge.

Operational Standard means a requirement of a law, regulation, policy, or published FWS standard, whether or not existing on the date of execution of this AFA, that the FWS would have to meet in performing an Activity covered by this AFA.

Parties means the Council of Athabascan Tribal Governments and the Fish and Wildlife Service as signatories to this AFA.

Project Work Description means the detailed descriptions of the specific Activities included in this AFA appended hereto as Attachment A.

Published FWS standard means a written guideline, procedure, or other document that governs how the FWS performs an Activity, whether published by the FWS or another entity.

Reassumption means reassumption of activities under this AFA by the FWS in accordance with applicable provisions in this AFA.

Refuge Manager means the Refuge Manager of the Yukon Flats National Wildlife Refuge, including any acting Refuge Manager and any other employee of the FWS who the Refuge Manager designates to act on behalf of the Refuge Manager for a specific purpose.

Regional Director means the Regional Director, Alaska, Region 7, United States Fish and Wildlife Service.

Retrocession means withdrawal from this AFA by CATG with regard to, and ceasing to perform, any or all of the Activities covered by this AFA.

Secretary means the Secretary of the Interior or her or his authorized representative.

Subsequent AFA means an AFA entered into by CATG and the FWS for a term subsequent to the term of this AFA, and covering Activities which are the same or similar to the Activities covered by this AFA.

Visitor means any person, other than an employee or agent of FWS at the Yukon Flats NWR or of CATG for purposes of performing an Activity covered by this AFA, who is on the Yukon Flats NWR.

Yukon Flats National Wildlife Refuge or *Yukon Flats NWR* means the unit of the National Wildlife Refuge System established by Congress in section 302(9) of the Alaska National Interest Lands Conservation Act, Pub. L. 96-467, 16 U.S.C. § 668dd note.

Section 5. Physical Area Covered

Activities described in this AFA generally relate to the Yukon Flats NWR as described in section 302(9) of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, 16 U.S.C. § 668dd.

Section 6. Activities Covered

A. *Activities.* Under this AFA, CATG will perform Activities in the following categories:

- o Locating Section 17(b) Easements
- o Environmental Education/Outreach
- o Wildlife Harvest Data Collection
- o Eastern Yukon Flats Moose Population Estimation Survey
- o Logistics (Ft. Yukon Equipment and Facility Maintenance)

The Activities in each category are more fully described in Attachment A to this AFA.

B. *Supplies, Tools, and Equipment.* Unless specifically provided for in the Project Work Description, CATG will provide all supplies, tools and equipment necessary to perform the Activities included in this AFA.

C. *Programs, Functions, Services, and Activities Retained by the FWS.* The FWS retains all programs, functions, services, and activities at the Yukon Flats NWR and elsewhere in the FWS and the Department that are not to be performed by CATG under this AFA.

D. *Additional Activities.* In addition to the Activities identified by subsection A of this section, CATG may propose to perform and the FWS may fund additional Activities under this AFA. The FWS and CATG will document any additional funding and Activities by amendment of this AFA as provided in section 18 of this AFA.

Section 7. FWS Direction and Control

A. *Refuge Manager.* Under this AFA, the Refuge Manager will retain ultimate responsibility and authority for directing and controlling the operation at the Yukon Flats NWR.

B. *Priorities.* The Refuge Manager and CATG's Designated Official will work to set, and, as necessary, revise written priorities for CATG to follow in performing the Activities covered by this AFA. CATG will follow those priorities in performing the Activities.

C. *Consistency.* CATG will perform each Activity covered by this AFA at a time and in a manner consistent with the purposes of the Yukon Flats NWR and the missions of the FWS

and the National Wildlife Refuge System.

Section 8. Operational Standards

A. *General Regulations/Standard.* CATG will perform each Activity covered by this AFA in a manner that supports and otherwise is compatible with the purposes of the Yukon Flats NWR; the protection and enhancement of fish and wildlife resources, the natural environment, public health and safety, and positive visitor experience; and the public images and missions of the Yukon Flats NWR, the National Wildlife Refuge System, and the FWS.

B. *Specific Regulations/Standards.* The parties will set forth the specific standards that CATG will be expected to comply with in carrying out Activities under this AFA in the description of the Activities set forth in the Project Work Descriptions, Attachment A.

C. *Waiver of Regulations/Standards.* CATG may submit to the Secretary a written request for a waiver of any regulation or standard of the Department of the Interior in accordance with Article II, Section 14(b) of the Compact and the regulations found at 25 CFR Section 1000.220-232. However, notwithstanding this subsection, to the extent CATG has agreed in the Project Work Descriptions to comply with the specific regulations applicable to the Activities set forth in the Project Work Descriptions, CATG will not seek waiver of those regulations.

D. *Environmental and Historic Preservation Compliance.* In conducting any Activity covered by this Agreement, CATG will comply with all applicable laws, regulations, policies, and published FWS standards concerning the environment. With respect to any Activity covered by this Agreement which is subject to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4231, et seq., and/or the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-47mm, the Refuge Manager will give CATG written notice of, and the FWS will complete, the processes required under those acts. Upon receipt of such notice, CATG will refrain from performing any part of the Activity to which either of these two statutes apply until the Refuge manager provides CATG written clearance and, and where applicable, instruction on how to proceed.

E. *Disclaimer.* Nothing in this AFA is intended to exempt CATG from complying with any Federal law, regulation, or other provision that otherwise would apply to CATG.

Section 9. Performance Measurement

A. *Activity Records.* The parties will set forth in the Project Work Descriptions (Attachment A) an explanation of any Activity Record that CATG will need to maintain as part of its performance of the Activity. Activity Records will assist the FWS in monitoring CATG's performance of the Activities as further described in the Project Work Description, Attachment A.

B. *Monitoring, Evaluation, and Notice of Performance.* The Refuge Manager, in

coordination with CATG's Designated Representative, will monitor and evaluate the performance of CATG under this AFA and notify CATG of any deficiency.

(1) *Monitoring.* Monitoring by the FWS will include:

(a) *Direct Observation.* Direct observation and documentation by the FWS of the performance of Activities by CATG;

(b) *Review of Activity Records.* Review of Activity Records provided to the FWS by CATG under subsection A of this section; and

(c) *Compliments and Complaints.* Review of written and documented oral compliments and complaints received by the FWS concerning the performance of Activities by CATG under this AFA.

(2) *Evaluation.* The FWS will evaluate the performance of CATG under this AFA by comparing the information gathered in the monitoring process to the terms and conditions of this AFA.

(3) *Notice to CATG.* The FWS will notify CATG concerning the performance of CATG under this AFA, as follows:

(a) *Compliments and Complaints.* The FWS will notify CATG in writing of each written and documented oral compliment and complaint received by the FWS concerning any Activity performed by CATG under this AFA.

(b) *Performance Deficiency.* Where the FWS finds a deficiency in the performance of CATG under this AFA, it will notify CATG of the deficiency, as follows.

(i) *Oral Notice.* The Refuge Manager orally will notify the CATG Designated Official of any performance deficiency that is minor, an obvious oversight, or of an emergency nature.

(ii) *Written Notice.* The Refuge Manager will notify the Board in writing of any other performance deficiency, including any that constitutes grounds for reassumption under section 15.B of this AFA. The written notice will identify the Activity and describe the performance at issue, the applicable Operational Standard or term or condition of this AFA, and why the performance of CATG does not meet the term or condition. The notice will give CATG a reasonable amount of time to either remedy the deficiency or establish that no deficiency exists, the amount of time to be set by the Refuge Manager depending on the nature of the deficiency and its potential effect on the purposes of the Yukon Flats NWR; the

protection and enhancement of fish and wildlife resources, the natural environment, public health and safety, or positive visitor experience; or the public image or mission of the Yukon Flats NWR, the National Wildlife Refuge System, or the FWS.

(iii) Reassumption. If the Refuge Manager determines that CATG has not taken adequate steps to correct a deficiency under subsection (ii) above and the deficiency is deemed sufficient to warrant FWS re-assuming the Activity, the Refuge Manager will initiate a formal reassumption of the Activity in accordance with section 15.B of this AFA.

C. *Audits.* CATG will provide the Refuge Manager annually a copy of the audit conducted in accordance with Article II, Section 4 of the Compact.

D. *Final Report and Review.*

(1) *Final Report.* Prior to the expiration date of this AFA (July 31, 2005), CATG, will prepare and submit to the Refuge Manager a final report on the Activities performed by CATG under this AFA. The report will include an introduction, major accomplishments, status of resources, and financial synopsis. The report will contain information sufficient for the Refuge Manager, the FWS, and the Secretary to prepare any reports to Congress they are required to prepare concerning this AFA.

(2) *Final Performance Review.* After CATG submits its final report to the Refuge Manager, but prior to the expiration date of this AFA, the Board and CATG's Designated Official will meet with the Refuge Manager to discuss the performance of CATG under this AFA and how to improve the working relationship of the FWS and CATG under any Subsequent AFA.

Section 10. Personnel

CATG will be responsible for hiring and firing employees who will work for CATG on Activities set forth in this AFA. CATG will ensure that its employees have sufficient training, skill, and experience to properly and safely perform the Activities covered by this AFA. The United States will not be responsible for any unemployment or worker's claim made by a CATG employee in connection with carrying out any Activity covered by this AFA.

Section 11. Funding

A. *Background.* All amounts identified in this Agreement are subject to appropriation by Congress and will be adjusted accordingly. Notification to CATG of such adjustment will occur as soon as practicable following enactment of the relevant appropriation act. All funding commitments made in this AFA are subject to those uncertainties and to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341.

B. *Amounts Transferred.* In consideration of CATG performing the Activities recited in section 6 of this AFA in accordance with the terms and conditions of this AFA, the FWS will transfer funds to CATG, as follows:

Locating Section 17(b) Easements	\$13,000.00
Environmental Education/Outreach	\$10,000.00
Wildlife Harvest Data Collection	\$18,000.00
Eastern Yukon Flats Moose Population Estimation Survey	\$13,000.00
<u>Logistics (Ft. Yukon Equipment and Facility Maintenance)</u>	<u>\$ 5,000.00</u>
Total:	\$59,000.00

C. *Payment Procedures.* Notwithstanding Article II, section 3 of the Compact, the payment procedures set forth in this subsection shall apply to this AFA. No later than 21 days after the Refuge Manager receives from the FWS the initial funding advisory for the Yukon Flats NWR or within 21 days after the effective date of this AFA, whichever is later, upon receipt of an invoice from CATG which includes bank account number and routing information, FWS will make an electronic payment to CATG of 100% of the amounts due under subsection B of this section.

D. *Reallocation.* Notwithstanding Article I, Section 2(b) and Article II, Section 6 of the Compact, CATG shall not reallocate to any program, service, function, or activity, or portion thereof, not covered by this AFA, any funds provided to CATG by the FWS under this AFA.

E. *Additional Activities.* The FWS may, at any time prior to the expiration date of this AFA, fund any additional Activity proposed by FWS which CATG elects to perform.

F. *Lobbying Prohibition.* CATG agrees that it will not utilize any of the funds paid under this AFA to lobby Congress in any manner prohibited by Federal law.

G. *Errors, Omissions, and Adjustments to Funding.* There may be errors or omissions that require adjustment regarding the funds transferred to CATG by the FWS under this AFA. The Parties will confer prior to the FWS making, and CATG will cooperate in achieving, any such adjustment to funding.

Section 12. Facilities, Tools, Equipment, Materials, and Supplies

The Parties will identify in the description of Activities set forth in the Project Work Description, Attachment A, to this AFA all Available Property that FWS will make available to CATG for performance of the Activities under this AFA. All Available Property provided to CATG under this AFA shall remain Federal property and title shall not be transferred to CATG. Subject to the availability of funds and approval of the Refuge Manager, at the request of CATG the FWS will repair or replace Available Property as necessary for CATG to perform the Activities covered by this AFA. CATG will take reasonable steps to protect all Available Property and other Federal property in the area covered by this AFA from fraud, theft, abuse, damage, or loss. Article II, Section 15(a) and (c) of the Compact shall not apply to this Agreement.

Section 13. Federal Tort Claims Act Coverage and Notice of Incident or Claim

A. *Federal Tort Claims Act.* In carrying out Activities under this AFA, CATG shall be covered by the Federal Tort Claims Act (FTCA) as provided for under Article II, Section 16 of the Compact; Section 314 of Pub. L. 101-512, 25 U.S.C. § 450f Note; and applicable regulations found at 25 CFR Sections 1000.270-.283. CATG accepts any risk not covered by the FTCA

B. *Notice of Incident.* CATG will promptly notify the Refuge Manager in writing of any incident resulting from the performance by CATG of an Activity covered by this AFA and involving personal injury, death, or property damage.

C. *Notice of Claim.* CATG and the FWS will promptly notify each other in writing of any claim that either party receives from a third party for damage, injury, or death resulting from or relating to any Activity covered by this AFA.

Section 14. Emergencies and Unusual Events

A. *Notice.* CATG will promptly notify the FWS of any emergency or other unusual event an employee of CATG observes while carrying out the scope of Activities in this AFA. The FWS will promptly notify CATG of any emergency or unusual event an employee of the FWS observes in that area and within the scope of responsibility of CATG under this AFA.

B. *Temporary Operation and Control.* Where necessary to deal with an emergency that threatens the health or safety of any person or the viability of any feature of the area covered by this AFA, the FWS temporarily may assume operation and control of any Activity covered by this AFA, including supervising any employee of CATG engaged in the Activity. When the emergency ceases to exist, the FWS will return operation of the Activity to CATG.

C. *Emergency Procedures.* In an emergency that threatens the health or safety of any person or the viability of any feature of the area covered by this AFA, the FWS and CATG will use the following procedures:

(1) *Determination by Refuge Manager.* The Refuge Manager will determine when an emergency exists and when it has ceased to exist.

(2) *Notice to Employees of CATG.* Where practicable, the Refuge Manager will orally notify the CATG Designated Official or other available employee of CATG of the existence of the emergency and how an Activity covered by this AFA is involved.

(3) *Response of CATG.* Upon receiving notice of an emergency under this section, every employee of CATG performing the Activity involved will immediately:

(a) *Relinquish Operation and Control.* Relinquish operation and control of the Activity to the FWS;

(b) *Provide Assistance.* Assist the FWS with performing the Activity; and

(c) *FWS Supervision.* Follow any related instruction issued by an employee of the FWS.

(4) *Employee of CATG Not Available.* Where neither the CATG Designated Official nor another employee of CATG is available to receive notice of an emergency, the FWS may, without notice, take over operation and control of any Activity involved. Upon subsequently receiving oral or written notice of the emergency, each employee of CATG who is responsible for performing the Activity will respond as provided in subsection C(3) of this section.

(5) *Emergency Has Ceased to Exist.* When the Refuge Manager determines that the emergency has ceased to exist, the Refuge Manager orally will notify the CATG Designated Official or, where the CATG Designated Official is not available, an available employee of CATG of that fact, and orally relinquish to CATG operation and control of the Activity involved.

(6) *Written Report, Negotiation, and Adjustment.* Promptly after giving oral notice under subsection C(5) of this section that the emergency no longer exists, the Refuge Manager will submit to CATG a written report of the emergency, including a brief description of what happened, each Activity involved, and the participation of the FWS and CATG in dealing with the emergency. The FWS and CATG will then meet as necessary to negotiate any reduction or increase in funding or Activities covered by this AFA that may be appropriate as a result of the work done or not done by CATG during the emergency. For any adjustment of funding greater than \$1,000.00, the FWS and CATG will amend this AFA as provided in section 18 of this AFA.

Section 15. Retrocession, Reassumption, and Expiration

A. *Retrocession by CATG.* CATG may retrocede and cease performing any or all of the Activities covered by this AFA in accordance with Article V. Section 7(c) of the Compact and 25 CFR Sections 1000.330 through 1000.339.

B. *FWS Reassumption.* FWS may reassume any or all of the Activities set forth in this AFA in accordance with 25 CFR Sections 1000.300 through 1000.318.

Section 16. Trust Responsibility and Sovereign Immunity

A. *No Effect on Trust Responsibility.* The Parties do not intend nor shall this AFA be interpreted as in any way waiving, modifying, or diminishing the trust responsibility of the United States that exists under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity.* Nothing in this AFA waives the sovereign immunity of CATG's member Tribes.

Section 17. Effective Date and Term

A. *Effective Date.* Except as otherwise directed by Congress, the effective date of this AFA will be 90 days after the date the Secretary submits the signed AFA to Indian Tribes and Congress, as provided in section 403(f) of the Act (25 U.S.C. § 458cc(f)).

B. *Term.* This AFA covers Activities to be performed by CATG and funds to be provided by the FWS from the effective date of this AFA through July 31, 2005, unless the parties mutually agree to extend the AFA to complete specific Project Work Descriptions.

Section 18. Amendment and Correction

A. *Modification of AFA.* Except for the correction of minor, non-substantive errors or omissions, the FWS and CATG may modify this AFA only by amendment executed in the same manner as this AFA, except that only three originals are required.

B. *Minor Errors or Omissions.* The FWS and CATG may correct minor, non-substantive errors or omissions in this AFA by executing a written errata sheet signed and dated by the Refuge Manager and the Chairman.

C. *Confer and Cooperate.* The FWS and CATG will confer and cooperate, as necessary, regarding the need for any modification or correction of this AFA.

Section 19. ISDEAA Title I Provisions

A. Notwithstanding Title II, Section 19 of the Compact, the Parties agree that the only provisions of Title I of the Act that apply to this Agreement are those that are specifically identified in this Agreement and the Project Work Descriptions.

B. In addition to those Title I provisions identified in other sections of this Agreement or in the Project Work Descriptions, the following Title I provisions incorporated into the Compact shall also apply to this Agreement:

- (1) Section 7(a) (wage and labor);
- (2) Section 7(b)-(c) (Indian preference);
- (3) Section 105(e) (retrocession);
- (4) Section 106(k) (expenditures); and

(5) Those Title I provisions set forth in Section 406(c) of Title IV of the Act, except Section 105(f) of the Act, as provided in Section 12 of this Agreement.

Section 20. Designated Official

The Designated Officials for the Parties are the Refuge Manager of the Yukon Flats National Wildlife Refuge for the U.S. Fish and Wildlife Service, and the Executive Director of the Council of Athabascan Tribal Governments.

Section 21. Entire Agreement

The Compact and this AFA, including all recited attachments, set out the entire agreement between CATG and FWS concerning the terms and conditions under which CATG will perform and the FWS will fund Activities at the Yukon Flats NWR during the term of this AFA. This AFA supersedes any and all previous, express or implied, oral or written understandings and agreements of CATG and the FWS concerning the terms and conditions for performing and funding those Activities. To the extent this AFA may conflict or otherwise differ from the Compact, the Act or 25 C.F.R. Part 1000 or 1001, the terms and conditions of this AFA will control so long as they are not contrary to law.

Section 22. Severability.

Except as provided in this section, this AFA shall not be considered invalid, void or voidable if any section or provision is found to be invalid, unlawful or unenforceable by a court of competent jurisdiction. In the event that a section of this Agreement, or any Amendment thereto, is found by a court of competent jurisdiction to be invalid, void or voidable, the parties will seek by mutual agreement to amend, revise or delete any such section in accordance with the overall purpose and intent of Self-Governance, the Compact and this AFA.

THE FOREGOING PROVISIONS OF THIS 2004-05 ANNUAL FUNDING AGREEMENT, INsofar AS ALLOWED BY TITLE IV OF THE ACT, OTHER LAWS OF THE UNITED STATES, ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW. EXECUTED IN TWO ORIGINALS.

COUNCIL OF ATHABASCAN TRIBAL GOVERNMENTS,
BY:

Randy Mayo, Chairman
Council of Athabaskan Tribal Governments

Date

UNITED STATES FISH AND WILDLIFE SERVICE,
BY:

Rowan W. Gould
Regional Director
Alaska, Region 7
United States Fish and Wildlife Service

Date

Gary Goldberg
Agreements Specialist
Alaska, Region 7
United States Fish and Wildlife Service

Date